

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS

NOTICE OF FINAL RULEMAKING

The Director of the Department of Consumer and Regulatory Affairs (Director), pursuant to the authority set forth in § 6 (a) (3) of the Education Licensure Commission Act of 1976, effective April 6, 1977 (D.C. Law 1-104; D.C. Official Code § 38-1306 (a) (3)) (2001); Reorganization Plan No. 3 of 1988, effective October 8, 1988; the Educational Licensure Commission Amendments Act of 1988, effective March 16, 1989 (D.C. Law 7-217; D.C. Official Code § 38-1309) (2001), and Mayor's Order 96-15, (February 8, 1996), hereby gives notice of the adoption of the following amendments to Title 16 DCMR Chapter 22 (Postsecondary Nondegree Schools), section 2219. This final rule brings the refund policy of District of Columbia based non-degree proprietary schools into conformity with federal regulations.

The proposed rulemaking was published on May 30, 2003 in the *D.C. Register*, 50 DCR 4270-4271. Pursuant to §6(b)(3) of the Education Licensure Commission Act of 1976, effective April 6, 1988 (D.C. Law 1-104; D.C. Official Code §38-1306(a)(3)), the proposed rulemaking was transmitted to the Council of the District of Columbia for a 45-day review period. The Council took no action, therefore, the rules were deemed approved. No changes have been made to the proposed rules and no comments were received. These final rules will be effective upon publication of this notice in the *D.C. Register*.

Section 2219 of Title 16 DCMR Chapter 22 is amended to read as follows:

2219 REFUND POLICIES

- 2219.1 A school shall furnish to the Commission a schedule of its tuition and fees and its prepaid tuition plan and refund policy.
- 2219.2 A school shall provide each student a period of seventy-two (72) hours to rescind any contract and to receive a refund of all prepaid tuition unless the student has entered training. This period shall commence from the date of signing, but shall not include or end on any Saturday or Sunday or legal holiday. This subsection shall not apply if a student has begun instruction. For purposes of this Chapter, a student has begun instruction upon attendance of one or more classes.
- 2219.3 A school shall provide each student, in a contract or on a separate sheet, notice of the student's right to rescind the contract within seventy-two (72) hours of signing and notice of the fact that, upon rescission, the school shall refund all prepaid tuition advanced to the school unless the student has begun instruction.
- 2219.4 A school shall provide each student a copy of the school's tuition plan and refund policy at the time of enrollment.

- 2219.5 The Commission shall approve each school's refund policy only when it provides that the amount retained by the school does not exceed an amount calculated in accordance with the following standards:
- (a) A reasonable nonrefundable enrollment or registration fee shall be stated in the contract or separately and shall not exceed the lesser of twenty percent (20%) of the total cost of the course or one hundred dollars (\$ 100);
 - (b) If a student begins instruction and withdraws or is discontinued for any reason after instruction begins prior to completion of sixty percent (60%) of the scheduled program, the school shall refund to the student a sum which is the exact pro rata portion of tuition unexpended by the student, rounded to the nearest ten percent (10%), less any unpaid non-tuition charges owed by the student for the period of enrollment for which the student has been charged, and less a reasonable administrative fee not to exceed the lesser of five percent (5%) of the tuition or one hundred dollars (\$ 100).
- 2219.6 The prorated amount under § 2219.5(b) shall be determined by the ratio of the number of weeks or lessons in series of instruction completed by the student to the total number of weeks or lessons of instruction offered. Any portion of a week's attendance by a student shall be considered a full week's attendance for the purpose of this section. In the case of correspondence schools, any portion of a lesson in series shall be considered as a completed series.
- 2219.7 No school shall request or accept more than thirty percent (30%) of the total tuition prior to commencement of the program or schedule.
- 2219.8 A school shall make every effort to ensure that enrolled students intend to complete the program in which enrolled.
- 2219.9 A school shall keep adequate records to ensure that students who delay in requesting a refund are accommodated; provided, that the school is not required to honor a refund request submitted ninety (90) days after the end of the scheduled program for which the student was enrolled.

D.C. OFFICE OF PERSONNEL**NOTICE OF FINAL RULEMAKING**

The Acting Director, D.C. Office of Personnel, with the concurrence of the City Administrator, pursuant to Mayor's Order 2000-83, dated May 30, 2000, and in accordance with § 1301 of the District of Columbia Government Comprehensive Merit Personnel Act of 1978, effective March 3, 1979 (D.C. Law 2-139; D.C. Official Code § 1-613.01) (2001), hereby gives notice that final rulemaking action was taken to adopt the following rules. These rules amend Chapter 13, *D.C. Personnel Regulations*, Employee Development, to modify and update the entire chapter. No comments were received under the notice of proposed rulemaking published at 50 DCR 9944 11/21/03. Final rulemaking action was taken on December 23, 2003.

CHAPTER 13**EMPLOYEE DEVELOPMENT**

Chapter 13 of the D.C. Personnel Regulations is amended as follows:

1300 APPLICABILITY

1300.1 Pursuant to § 1301 of the District of Columbia Government Comprehensive Merit Personnel Act of 1978 (CMPA), effective March 3 1979 (D.C. Law 2-139; D.C. Official Code § 1-613.01) (2001), the provisions of this chapter are applicable to each employee of the District government, except:

- (a) Employees appointed to the Educational Service under the authority of § 801-A of the CMPA (D.C. Official Code § 1-608.01a) (2001); and
- (b) Employees of the District of Columbia Board of Education and the Board of Trustees of the University of the District of Columbia.

1301 GENERAL PROVISIONS

- 1301.1 The Mayor shall implement and maintain programs for the training and development of employees. This shall be conducted through planned courses, programs, systems or other instruction or education in fields that are or will be related to the performance of official duties for the District government. This system of training shall be created to ensure that the principles of efficiency, economy, and equitable treatment for all employees are carried out for the successful operation of the District government.
- 1301.2 The training and development shall be conducted to increase the knowledge, proficiency, ability, skill, and qualifications of the employees in the performance of their duties.

- 1301.3 A District government employee shall not suffer a loss in pay, tenure, or any other rights and benefits because he or she participated in any training or career development program when the participation has been approved or authorized by the District government.
- 1301.4 The provisions of any training program negotiated between the District government and a labor organization shall take precedence over the provisions of this chapter for employees in a bargaining unit represented by a labor organization, to the extent that there is a difference.
- 1302 ANNUAL EMPLOYEE DEVELOPMENT PLANS**
- 1302.1 The head of each agency (or his or her designee) shall prepare an annual employee development plan for the agency. The annual employee development plan shall identify:
- (a) Subject matter areas where training is needed;
 - (b) The category and number of employees requiring training;
 - (c) Sources of funding; and
 - (d) The cost for training.
- 1302.2 The annual employee development plan should also evaluate the impact and success of prior training and employee development activities.
- 1302.3 The Council of the District of Columbia may review and inspect all plans developed in accordance with this section.
- 1302.4 Annually, agencies shall review training needs and identify the following:
- (a) Training programs that bring about more effective performance at the least possible cost;
 - (b) Individual employee training needs as related to the program objectives of the agency; and
 - (c) Short-and long-term program needs by occupation, organization, or other appropriate groups.
- 1302.5 Each personnel authority shall conduct reviews utilizing appropriate review processes that satisfy or meet agency needs.

1303 INDIVIDUAL DEVELOPMENT PLANS

- 1303.1 As provided in Chapter 14 of these regulations for employees covered under the Performance Management Program (PMP), each supervisor, in collaboration with his or her employees covered under the PMP, shall prepare every year an Individual Development Plan for each covered employee. The Individual Development Plan shall be a part of the annual Performance Plan and shall identify areas for growth and development.

1304 MANDATORY CONTINUING EDUCATION AND TRAINING

- 1304.1 Pursuant to § 955 of the CMPA (D.C. Official Code § 609.55) (2001), each employee appointed to the Management Supervisory Service shall be required to maintain and enhance his or her management and supervisory skills and to attend requisite training courses every year as prescribed by the personnel authority. Failure to complete the prescribed education and training within the specified time frames may result in administrative action against the employee.

- 1304.2 Pursuant to § 857 of the CMPA (D.C. Official Code § 1-608.57) (2001), the Corporation Counsel shall establish:

- (a) An annual mandatory program of continuing legal education for Legal Service attorneys employed in the Office of the Corporation Counsel and other agencies under the personnel authority of the Mayor; and
- (b) An annual mandatory program of in-house or other training to maintain and enhance the management supervisory skills of Legal Service supervisory attorneys employed in the Office of the Corporation Counsel and other agencies under the personnel authority of the Mayor who supervise one (1) or more attorneys as part of their normal duties.

1305 ESTABLISHING TRAINING PROGRAMS

- 1305.1 Each personnel authority shall develop a policy that governs training needs of employees subject to this chapter. The policy shall be set forth in writing and shall include a broad statement of purposes for which training will be given and of the assignment of responsibilities for ensuring that these purposes are attained.

- 1305.2 Each personnel authority shall take appropriate administrative action to assure that:

- (a) Training plans and programs are developed to meet the short- and long-term training needs of agencies;
- (b) Priorities are established to implement the training programs of the District government;

- (c) Provisions are made for the use of funds and personnel in accordance with established priorities for training programs by agencies;
- (d) Employee self-development is encouraged by making available, where applicable, reasonable self-study materials promoting and recognizing self-directed improvement in performance; and
- (e) Information on the general conduct of District government training programs is accessible and available to agency heads.

1305.3 Training programs established by personnel authorities under this chapter shall, to the extent feasible:

- (a) Meet as many of the agencies' short- and long-term needs as possible;
- (b) Permit work-assignment flexibility to promote employee growth to increase efficiency in the quality and quantity of work; and
- (c) Be fully integrated with other personnel management and operating activities.

1306 SELECTION AND ASSIGNMENT FOR TRAINING

1306.1 Each personnel authority shall ensure that every District government employee is treated fairly in the selection and assignment of training.

1306.2 In accordance with the D.C. Human Rights Act of 1977, effective December 13, 1977 (D.C. Official Code § 2-1401.01 *et seq.*) (2001) (Act), the District government shall not discriminate on the basis of race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, familial status, family responsibilities, matriculation, political affiliation, disability, source of income, or place of residence or business. Sexual harassment is a form of sex discrimination that is also prohibited by the Act.

1306.3 The personnel authority shall ensure that the selection of employees for training is made in a non-discriminatory manner and is not based on factors unrelated to the need for training.

1306.4 Each personnel authority may consider an employee's complete training and self-development activities in initiating a personnel or position change.

1307 EVALUATION OF TRAINING PROGRAMS

1307.1 For agencies under the personnel authority of the Mayor, the D.C. Office of Personnel, Center for Workforce Development, shall be responsible for evaluating the results and effects of training under this chapter.

1307.2 For other agencies subject to this chapter, the appropriate personnel authority may evaluate the results and effects of training under this chapter, and shall submit to the Director of the Center for Workforce Development, upon request, the result of such evaluation.

1308 TRAINING THROUGH NON-DISTRICT GOVERNMENT FACILITIES

1308.1 The personnel authority may make arrangements for employee development and training with colleges, universities, other institutions of higher education, or private sector organizations, as appropriate.

1308.2 Authorization of proposed training in a non-District government facility pursuant to § 1308.1 shall be based on a determination that the facility is capable of providing the required training effectively and in a timely fashion, and that equivalent training is not available from District-government sponsored programs.

1308.3 Training shall not be allowed in or by any facility that discriminates on the basis of race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, familial status, family responsibilities, matriculation, political affiliation, disability, source of income, place of residence or business, or other factors unrelated to the need for training.

1308.4 Pursuant to this chapter, each personnel authority may establish appropriate limitations on the amount of on-duty time an employee may be granted for training.

1308.5 The personnel authority shall execute a written training agreement with each non-District government entity or facility selected for employee development activities under this chapter. The following information shall be included in written training agreements for employee development activities conducted by, in, or through non-District government facilities:

- (a) That all training materials, audio-visual aids, books, and publications developed as a direct result of the contract shall become the property of the District government;
- (b) That all supplies, materials, equipment, and other property purchased and billed to the District government by the contractor shall become the property of the District government upon the conclusion of the contract; and

- (c) That the contractor shall be paid only upon submission of the required deliverable and an itemized invoice signed by the contractor listing all costs and charges, and the period of services.

1309 DETERMINING TIME IN TRAINING

- 1309.1 Except as provided in §1309.2, an employee assigned to full-time training shall be counted as being in training the same number of hours as in a pay status during the training assignment, up to a maximum of eight (8) hours a day or forty (40) hours a week.
- 1309.2 Firefighters in the Fire and Emergency Medical Services Department assigned to full-time training shall be counted as being in training the same number of hours as in a pay status during the training assignment on the basis of an average workweek of forty-eight (48) hours.
- 1309.3 An employee assigned to training on less than a full-time basis shall be counted as being in training the same number of hours spent in instruction and necessary travel.

1310 AGREEMENT TO CONTINUE IN SERVICE

- 1310.1 An employee selected for training in a non-District government facility shall agree in writing to:
 - (a) Continue in the service of the District government after the end of the training for a period of time at least equal to the length of the training period, unless the employee is involuntarily separated; and
 - (b) Pay to the District government the amount of all expenses incurred in connection with the training, other than his or her salary, if the employee voluntarily leaves District government service before the end of the period for which he or she had agreed to serve.
- 1310.2 The agreement shall also outline the procedure to recover payments of expenses incurred in such training.
- 1310.3 In determining the required service covered in the agreement, the employee shall be given credit for service performed beginning on the first workday after the end of the training.
- 1310.4 An employee who enters into an agreement pursuant to § 1310.1 shall give his or her employing agency a minimum notice of ten (10) workdays prior to the employee separating from District government service.

- 1310.5 A written agreement pursuant to § 1310.1 shall not be necessary in the following situations:
- (a) When an employee is selected for training provided by a manufacturer as a part of the normal service contract as a result of purchase or lease or demonstration of a product under a procurement contract;
 - (b) When an employee is selected for training that does not exceed eighty (80) hours of duty time within a single training program;
 - (c) When an employee is selected for training that is given through an independent study course; or
 - (d) When the cost of training an employee is below two thousand five-hundred dollars (\$2,500).
- 1310.6 The District government may recover the incurred training expenses as provided in Chapter 29 of these regulations. Each personnel authority may waive the training expenses, in whole or in part, if recovery would be against equity, good conscience, or against the public interest.
- 1311 PAYMENT OF TRAINING EXPENSES**
- 1311.1 Pursuant to § 1301(c)(2) of the CMPA (D.C. Official Code § 1-613.01(c)(2)) (2001), each personnel authority shall determine full training costs, including, but not limited to: cost to the District government for employee travel, subsistence, transportation, tuition, fees, books and related materials, and membership fees, to the extent that the fee is a necessary cost directly related to the training itself or that payment of the fee is a condition precedent for the training.
- 1311.2 Full training costs pursuant to § 1311.1 shall not include compensation paid to an employee while in training status.
- 1312 FAILURE TO COMPLETE TRAINING**
- 1312.1 Each personnel authority shall establish procedures to protect the District government's interests when employees fail to complete training for which an agency pays the expenses.
- 1312.2 Such procedures shall include the requirement that the expenses incurred by the District be repaid by the employee when it is determined that the employee unjustifiably failed to complete the training.
- 1312.3 The personnel authority, upon written determination of undue hardship, may waive the repayment requirement.

- 1312.4 As applicable, the Center for Workforce Development shall charge the cost of the training to the employing agency's budget when an employee of the agency fails to properly withdraw from a registered class.

1313 RECORDS OF TRAINING

- 1313.1 To provide a reasonable basis for the evaluation of training, each personnel authority shall establish procedures for the reporting of completed training.
- 1313.2 Each agency shall maintain records of payments made for travel, tuition and fees, and other necessary expenses relating to the training, as may be determined by the personnel authority.

1314 ACCEPTANCE OF CONTRIBUTIONS, AWARDS, AND PAYMENTS FROM NON-DISTRICT GOVERNMENT ORGANIZATIONS

- 1314.1 The personnel authority shall establish procedures concerning the acceptance of contributions, awards, and payments in connection with any training provided by non-District government organizations.
- 1314.2 Except as provided in § 1314.3, District government employees may accept contributions, awards, and payments made directly to them, or on their behalf, by non-District government organizations in connection with training that the employees receive in non-District government facilities.
- 1314.3 Any contribution, award or payment made by a non-District organization to a District government employee, in whole or in part, as a result of the training while in a pay status or at such other times when the District government agency paid the expenses of the training, in whole or in part, shall be returned to the District government.
- 1314.4 When funding sources other than agency appropriations are used, in whole or in part, the following conditions shall be met:
- (a) The training shall be identified, itemized and included in the agency's Annual Employee Development Plan;
 - (b) The training shall be subject to approval by the personnel authority prior to obligations being made; and
 - (c) The personnel authority may prescribe additional administrative restrictions in the use of grant funds, scholarships, contributions, awards, and other sources of training.

- 1314.5 Notwithstanding any other provisions in this chapter, an employee may accept a contribution, award, or payment when, in the judgment of the agency head (or his or her designee):
- (a) The contribution, award, or payment is not a reward for services to the organization prior to the training; and
 - (b) Acceptance of the contribution, award, or payment:
 - (1) Would not reflect unfavorably on the ability of the employee to perform his or her official duties in a fair and objective manner;
 - (2) Would not compromise the honesty or integrity of District government programs or District government employees and their official actions or decisions;
 - (3) Would otherwise be proper and ethical for the employee concerned under the circumstances in a particular case; and
 - (4) Would not have any direct or indirect financial interest that conflicts or would appear to conflict with the fair, impartial, and objective decision of the employee.
- 1314.6 An employee may accept a contribution, award or payment (whether made in cash or in kind) that falls within the scope of this chapter only with specific written authorization.
- 1314.7 The following records shall be maintained in connection with the acceptance of a contribution, award, or payment:
- (a) The name of the recipient;
 - (b) The name of the organization;
 - (c) The amount and nature of the contribution, award, or payment and the purpose for which it is to be used; and
 - (d) A copy of the written authorization.
- 1314.8 Notwithstanding any provision in this section, the provisions of Chapter 18 of these regulations shall take precedence, to the extent that there is a difference.

1315 ATTENDANCE AT MEETINGS AND CONFERENCES

- 1315.1 Funds made available to an employee by an agency for travel and other expenses relating to attendance at meetings or conferences shall be limited to such meetings or conferences which are concerned with the functions or activities to which the funds are allocated, or which will contribute to improved conduct, supervision, or management of the functions or activities of the employee or the agency, as applicable.

1316 TRAINING AND THE PAYMENT OF PREMIUM PAY

- 1316.1 Each agency shall schedule employee training so as to avoid, whenever possible, periods when overtime or premium pay, or both, would otherwise be payable.
- 1316.2 Pursuant to § 1301(c)(2) of the CMPA (D.C. Official Code §1-613.01(c)(2)) (2001), an employee assigned for training under this chapter shall not be paid overtime, holiday, night differential or Sunday premium pay.
- 1316.3 The Mayor (or his or her designee) may waive the prohibition on the payment of premium pay specified in § 1316.2 upon determining that such a payment would be in the interests of equity and good conscience or in the public interest.
- 1316.4 Notwithstanding the provisions of § 1316.2, a District government employee may be paid the applicable premium pay under any of the following circumstances:
- (a) If an employee, other than one assigned to full-time training at an institution of higher learning, is given training during a period of duty for which he or she is already receiving premium pay;
 - (b) If an employee is given training at night because the work situation he or she must learn to handle occurs only at night;
 - (c) If an employee is given training during hours in which he or she would be entitled to receive overtime, on a holiday, or on a Sunday, because the costs of such training, overtime or premium pay included, are less than the costs of the same training during regular work hours; or
 - (d) If the training is approved by the appropriate personnel authority upon a written request from the agency head (or his or her designee) giving the facts and circumstances of the matter and recommending a specific course of action.

1317 TRAINING LIAISON COORDINATORS

- 1317.1 The Director of the Center for Workforce Development or the independent personnel authority, as applicable, shall establish a training liaison coordination network

consisting of designated representatives from each agency to assist management in the coordination of employee development efforts.

- 1317.2 Each agency head shall designate representatives to carry out the training liaison coordination functions for the agency.
- 1317.3 The Director of the Center for Workforce Development shall take necessary administrative action to ensure that current information on employee development activities is available for employees through the training liaison coordination network.

1399 DEFINITIONS

- 1399.1 When used in this chapter, the following terms have the meaning ascribed:

Agency — any unit of the District of Columbia government, excluding the courts, required by law, by the Mayor of the District of Columbia, or by the Council of the District to administer any law, rule, or any regulation adopted under authority of law. The term “agency” shall also include any unit of the District of Columbia government created by the reorganization of one (1) or more of the units of an agency and any unit of the District of Columbia government created or organized by the Council of the District of Columbia as an agency.

Personnel Authority — an individual or entity with the authority to administer all or part of a personnel management program as provided in § 406 of the CMPA (D.C. Official Code § 1-604.06) (2001).

Training — the process of installing and maintaining systematic programs for the purposes of developing and enhancing employees’ performance through planned courses, systems, or other related and relevant courses; and to improve employees’ knowledge, ability, skill, proficiency and overall efficient performance of their official duties.